1968

Salt Lake City Fire Fighters Local 1645, Afl-Cio, Federated Fire Fighters of The State of Utah, Salt Lake City Police Union Local 470, Afl-Cio, Salt Lake City Police Mutual Aid Association, Salt Lake City Employees, Local 1004, Afl-Cio, For and On Behalf of Their Members, and Jim Fisher and Dave Bradford For Themselves and For and On Behalf of All Other Persons Similarly Situated v. Salt Lake City, A Municipal Corporation : Brief of Appellants

IN THE

SUPREME COURT
OF THE
STATE OF UTAH

SALT LAKE CITY FIRE FIGHTERS LOCAL 1645, AFL-CIO, FEDERATED FIRE FIGHTERS OF THE STATE OF UTAH, SALT LAKE CITY POLICE UNION LOCAL 470, AFL-CIO, SALT LAKE CITY POLICE MUTUAL AID ASSOCIATION, SALT LAKE CITY EMPLOYEES, LOCAL 1004, AFL-CIO, for and on behalf of their members, and JIM FISHER and DAVE BRADFORD for themselves and for and on behalf of all other persons similarly situated,

Plaintiffs and Appellants,

vs.

SALT LAKE CITY, a municipal corporation,

Defendant and Respondent.

Case No. 11351

BRIEF OF APPELLANTS

Appeal from the Order Dismissing Amended Complaint for Declaratory Judgment of the Third Judicial District Court for Salt Lake County,
The Honorable D. Frank Wilkins, Presiding

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STATEMENT OF THE CASE

Plaintiffs filed an action in the Third District Court in and for Salt Lake County on behalf of themselves and all employees of Salt Lake City similarly situated pursuant to Rule 23, Utah Rules of Civil Procedure, seeking a declaratory judgment that

(a) the words "any or all *appointive officers*" in Section 10-6-6 U. C. A. (1953) as amended by Laws of Utah 1955, ch. 12, § 1, did not include all employees of the city irrespective of their duties or the nature of their employment, and

(b) that the Ordinances of the defendant Salt Lake City of January 9, 1968, requiring "appointive officers and employees" to reside within a "fifteen mile radius from Washington Square" (R. 13) and that portion of the city Ordinances, Sections 30-1-10, 14-1-5, 17-3-5 (R. 14) prohibiting any political activity of any kind by health, fire or police employees, were void as being unconstitutional and beyond the powers of Respondent.

DISPOSITION OF THE CASE BY THE LOWER COURT

The Lower Court, Judge Wilkins, without expressly ruling on *any* of the issues before the Court, entered an Order dated July 10, 1968, dismissing plaintiffs' Amended Complain as failing "to state a cause of action" (R. 17-18). Plaintiffs are appealing herein from said final Order.

RELIEF SOUGHT ON APPEAL

This Appeal seeks to have this Court grant the declaratoy relief sought by plaintiffs-appellants and which was avoided and denied by the District Court, and reverse the judgment of the District Court for errors of law.

STATEMENT OF FACTS

The City adopted an Ordinance in early January, 1968, (R. 13) requiring all of its employees to remove their residences within "a 15 mile radius of Washington Square" within two years or face discharge. Many employees reside outside of the designated area in so-called "bedroom communities" abutting the irregular boundaries of the City (Exhibits 1 and 5). The City is served by a new and extensive system of freeways running through the City and adjacent areas where these employees reside (Map, Exhibit 1).

The City some years ago adopted three Ordinances (R. 14) prohibiting certain political activities by all employees of the health, fire and police departments of the City. The City interprets and enforces these Ordinances as prohibiting *any* political participation of any kind, even in nonpartisan elections, by these employees (R. 32; Exhibit 4). These Ordinances affect a large number of City employees (Exhibit 5).

No evidence or argument was advanced by the City presenting, nor do the ordinances themselves present, any reason, advantage, rationale or purpose for the Ordinances. Thus, in the context of the uncontroverted evidence presented by plaintiffs, the Ordinances must be interpreted as self-justifying.

POINT I.

THE ORDINANCE RESPECTING THE RESIDENCE OF EMPLOYEES EXCEEDS THE STATUTORY POWERS OF RESPONDENT.

The subject ordinance (R. 13) in substance and effect requires all employees to remove their residence within a "15 mile radius of Washington Square" within 2 years or face discharge. Respondent admits that "many employees of defendant have been employed for numerous years and reside outside the boundaries of defendant" (R. 16). The ordinance includes all employees — whether police officer, groundskeeper, janitor. The ordinance itself sets forth no purpose, rationale or need.

This Court has on a number of occasions enunciated the rule of limited powers of municipal corporations. This Court held, in *Stephenson* vs. *S. L. City Corporation*, 7 Utah 2d 28, 30, 317 P. 2d 597, 599 (1957):

> "That the powers of the city are strictly limited to those expressly granted, to those necessarily or fairly implied in or incident to the powers expressly granted, and to those essential to the declared objects and purposes of the corporation, is settled law in this state."

The Respondent offered no evidence or, indeed, any argument, justifying any need, real or imagined, for or any benefit to the City from, the subject ordinance. Two of the plaintiffs, men of long and distinguished service to Respondent in a variety of capacities, knew of no reason

or need for these ordinances (R. 26-39). The evidence adduced — the addresses of the employees, the fact that many reside outside Salt Lake City and outside the 15 mile radius, the location of the freeway system in and adjacent to the city, the addresses where these employees work (Exhibits 1, 2, 3 and 5) — establishes clearly that the ordinance was nothing but a wholly arbitrary exercise of raw power by the City. The hardship to these employees — without any reason, need or benefit to the City — is also obvious.

Respondent evidently claims to derive statutory power to adopt the subject residence ordinance from Section 10-6-6, Utah Code Annotated, 1953. That Statute reads:

> "Eligibility of officers — All elective officers of cities and of towns shall be chosen by the qualified voters of their respective municipalities. No persons shall be eligible to any elective office who is not a qualified elector of the city or town, nor shall any person be eligible to any office who is a defaulter to thec orporation. The governing body of a municipality may prescribe by ordinance that any or all *appointive officers* be qualified electors of the municipality." (Emphasis added.)

The *Stephenson* case, cited *supra,* is also helpful in its holding that

> "* * * It is a common rule of construction that wherever possible each word in a statute must be given a meaning, and 'that construction is favored which will render every word operative, rather than one which makes some words idle and nugatory.' (Citing)" 7 Utah 2d 28, 31.

Had the legislature meant to give Respondent the power to require that every employee of the city reside within the city, the legislature could have and presumably would have, used the simple word "employees" instead of the restrictive words "appointive officers." The ordinance itself completely bears out this distinction: the ordinance by its language covers "every appointive officer *and employee.*" Clearly both the legislature and Respondent by employing the word "appointive officer" meant something different and, obviously, more restrictive than "employee." The fact that Section 10-6-6 is part of Article 1 entitled "Governing Bodies" of the Municipal Government Code lends further support to Appellants' position that the Respondent's equating "appointive officers" with "all employees" cannot be supported.

Furthermore, even according Section 16-6-6 U. C. A., 1953, as amended, the construction argued for by Respondent, that statute certainly does not empower Respondent to require that all employees reside within 15 miles of a particular point (Washington Square) within the city. As the city map (Exhibit 1) clearly shows, the 15 mile radius embraces a fair sized area outside Salt Lake City.

POINT II.

THE ORDINANCES PROHIBITING ANY POLITICAL ACTIVITIES EXCEED THE STATUTORY POWERS OF RESPONDENT.

The subject ordinances relating separately to employees of the health, fire and police departments are identical in all respects except as to the department covered (R. 14). The ordinances read (the italicized portion is the only prohibition challenged by Appellants) :

> "Sec. 30-1-10. Political activity. *No person of the classified civil service of the health* [*or fire or police*] *department shall* use his official position or of any person, nor *be a member or delegate or alternate to any political convention, nor serve as a member of any committee of any political party,* or *take any active part in the management of any political campaign, nor solicit, collect, or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever.*"

Although the challenged portion of the subject ordinances prohibits only certain specified political activities, Respondent construes and enforces the ordinances as meaning that "there can be no political activity" and "no action in a political sense" (R. 32, lines 8-15) and as applicable to non-partisan elections as well (Par. 6, Exhibit 4).

Here, too, neither the ordinances themselves suggest nor did Respondent at the time of hearing herein offer, any reason, need, rationale or benefit necessitating, justifying or even supporting these ordinances and two long-time employees of Respondent, plaintiffs herein, testified that they knew of none (R. 26-39). Far from establishing any "compelling public interest" (as required by the California Supreme Court in the *Bagley* case, cited and quoted *infra*) or as having a "reasonable relation to the promo-

tion of efficiency, integrity or discipline" within the affected departments (as required by the New Jersey Supreme Court in the *De Stefano* case cited and quoted *infra* the Respondent herein made *no showing of any kind supporting these ordinances.* Nor are *any* of the constitutional standards laid down by the United States Supreme Court in the *Keyishian* case, *infra,* met by the subject ordinances.

POINT III.

THE ORDINANCES OF RESPONDENT RESPECTING THE RESIDENCE OF EMPLOYEES AND PROHIBITING ANY POLITICAL ACTIVITIES BY EMPLOYEES ARE VIOLATIVE OF THE CONSTITUTION OF THE STATE OF UTAH.

Plaintiffs have set out in paragraphs 10, 11, 12 and 13 of their Amended Complaint (R. 5) what they believe to be certain basic, fundamental, inalienable human rights with which they are by their creator endowed and which are expressly guaranteed in the Constitution of the State of Utah, and which are, appellants submit, violated by the subject ordinances. Among these provisions are Sections 1, 7, 18, 22 and 24 of Article I of the Constitution of the State of Utah.

Certain of the employees of the City reside outside of the City limits and others, outside of the arbitrary 15 mile radius (Map, Exhibit 1). The residence ordinance makes no provision for compensation if these modestly salaried

employees lose their equity in their homes in removing inside the specified area. The ordinance was adopted after these employees had established residence. The testimony of Officer Bradford (R. 33-37) illustrates something of the injustice, inequity, and hardships involved.

The map of the City and County (Exhibit 1) and the location of the freeway system illustrates clearly that the ordinance has no relationship at all to the time involved in the employee's getting to work; in fact, the map makes obvious intrusions on basis constitutional rights might, in example, might well be able to reach "Washington Square" in far less time than an employee living in, say, Holladay, and within the 15 mile radius, could reach the same destination.

Perhaps one could postulate a situation where such obvious intrusions on basis constitutional rights might, in balancing critical, imperative needs of the city against those of the employees, justify the subject ordinances. In arrogance of power, the City makes no attempt to claim or show any benefit to the city from this Ordinance; rather the ordinance is simply promulgated *ex cathedra.*

In *United States* vs. *Lovett,* 328 U. S. 303, 315-316, 90 L. Ed. 1252, 1259-1260 (1946), laws denying a livelihood are held to be included within the proscriptions of *ex post facto* laws and bills of attainder, and the constitutional requisites of laws impinging rights of public employees are spelled out definitively in *Keyishian* vs. *Bd. of Regents of University of New York,* 385 U. S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967). See also, *Landes* vs. *Town of North*

Hempstead, 36 U. S. Law Week 2313 (N. Y. Ct. of App. 1967), and *Vogel* vs. *County of Los Angeles,* 64 Cal. Rep. 409 (Dec., 1967).

POINT IV.

THE ORDINANCES OF RESPONDENT RESPECTING THE RESIDENCE OF EMPLOYEES AND PROHIBITING ANY POLITICAL ACTIVITIES BY EMPLOYEES ARE VIOLATIVE OF THE CONSTITUTION OF THE UNITED STATES.

The California Supreme Court in the landmark case of *Bagley* vs. *Washington Hospital District,* 421 P. 2d 409 (1966), well stated the problem (at page 417):

> "In summary we note that the expansion of government enterprise with its ever-increasing number of employees marks this area of the law a crucial one. As the number of persons employed by government and governmentally-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require, imperil the continued operation of our institutions of representative government. * * *"

And at page 414:

> "* * * Just as we have rejected the fallacious argument that the power of government to

impose such conditions knows no limits, so must we acknowledge that government may, when circumstances inexorably so require, impose conditions upon the enjoyment of publicly-conferred benefits despite a resulting qualification of rights.

"In doing so, however, *government bears a heavy burden of demonstrating the practical necessity for the limitation.* At the very least it must establish that the imposed conditions relate to the purposes of the legislation which confers the benefit or privilege * * *" (Emphasis added.)

Appellants submit that the *Bagley* case is sound, basic, critical contemporary law. Basically, *Bagley's* thrust is that "only a 'compelling' public interest can justify the imposition of restraints upon the political activities of public employees * * *" (421 P. 2d 409, 411) and the Court gives, Appellants submit, irrefutable argument in support of that thesis. Rather than attempt summary or precis of *Bagley* or burden this brief with extensive quotations from the opinion, Appellants respectfully urge this Court to examine the entire opinion and the exhaustive citations therein.

The New Jersey Supreme Court in the 1967 case of *De Stefano* vs. *Wilson,* 233 A. 2d 682 in striking down a regulation very similar to that at bar and where the plaintiff was a fireman (as are certain of the appellants herein) cited and quoted *Bagley* with approval and observed (at 687):

"Rule 128 exacts a surrender of freedoms unrelated to the public welfare or common weal. It

> bears no reasonable relation to the promotion of efficiency, integrity or discipline within the Hoboken Fire Department."

The United States Supreme Court in *Keyishian* vs. *Bd. of Regents of University of N. Y., supra,* (1967), held (at 17 L. Ed. 2d 642) :

> "* * * the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected (citing)."

CONCLUSION

This is an era when our courts seem most dedicated to protection and expansion of the constitutional rights of persons accused of crime — and rightly so. Certainly, however, our courts should be at least equally concerned with the constitutional rights of our fine, dedicated, law-abiding citizens who are employed by government. The City simply had no right and no reason to adopt these ordinances and the resultant hardship to its employees is apparent.

Appellants are not, as the City will argue, asking this Court to either second guess the City Commission or substitute the collective wisdom of this Court for that of the Commissioners. Appellants argue that fundamental human rights must be protected and when elected governmental officials choose to run roughshod over the rights of government employees — and as the California Supreme Court observed, their number, for good or ill, is large and on the

increase — this Court must give the Constitution of our State and the Constitution of our nation, meaningful application.

If our constitutional guarantees are to mean anything at all to law-abiding citizens, they must mean that the City cannot — without any justification at all — adopt these ordinances which so flagrantly abridge the most basic human rights and dignity.

In the interest of justice and preservation of basic human rights, these ordinances should be struck down by this Court.

Respectfully submitted,

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